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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,193	01/28/2004	Guillermo Silva	060014	1127
58110	7590	04/07/2006	EXAMINER	
ALBERT BORDAS, P.A. 5975 SUNSET DRIVE SUITE 607 MIAMI, FL 33143			PRATT, HELEN F	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/765,193

**Applicant(s)**

SILVA, GUILLERMO

**Examiner**

Helen F. Pratt

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 6 are indefinite in the use of the word "contained" in step E in claim 1, and line 3 in claim 6. It is not known what is meant by this term, i. e. whether it is in a container or not. This rejection is maintained

Claims 1 and 6 are indefinite in the use of the phrase "liquid feed". It is not known what the composition of the "liquid feed" is.

Claims 1 and 8 are indefinite in the use of the phrase "A spray dried rich creamy coconut mixture" or a "A method to develop a spray dried rich creamy coconut mixture". The beverage is not spray dried. Only the coconut milk is spray dried.

"Dehydration" as in claim 1, 3 lines from the bottom is spelled wrong and there should be a "to" instead of an "and" in front of "facilitate".

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leaflet No. 8, 1983, in view of Tayag (PH26114) and Beyerinck et al (6,763,607).

Leaflet No. 8, 1983 discloses that it is known to make a beverage from green coconuts (page 9, under "Green coconut drink), which contains coconut water, and green coconut meat. Claims 1 and 4 differ from the reference in the use of a spray dried base from water, sugar and coconut cream powder and in the particular method of spray drying. However, spray dried coconut cream is known as disclosed by Tayag (abstract). The cream contains maltodextrin as in claims 4 and 5. This coconut cream powder further contains sugar. However, nothing new or unobvious is seen in the addition of sugar for its known function of adding sweetness. Beyerinck et al. disclose spray-drying using atomized droplets sprayed into a heated chamber and a cyclone (col. 27, lines 40-70 and col. 28-60). Even though the composition of the reference is different, the process is known. The other reference to Tayag discloses that it is known to spray dry coconut cream. In addition, no weight is given to the method of making the product in a composition claim. Claim 1 is also a product by process claim. The fact that the procedures of the reference are different than that of applicant is not a sufficient reason for allowing the product-by-process claims since the patentability of such claims is based upon the product formed and not the method by which it was produced. See *In re Thorpe* 227 USPQ 964. The burden is upon applicant to submit objective evidence to support their position as to the product-by-process claims. See *Ex parte Jungfer* 18 USPQ 2D 1796. Therefore, it would have been obvious to make a beverage using the process of Beyerinck to make the spray-dried coconut cream of Tayag in the composition of Leaflet No. 8.

Claim 2 further requires that the beverage be like the jelly-like meat of an immature coconut. However, as the ingredients have been shown such a consistency would have been developed from the recipe. Therefore, it would have been obvious to make a beverage of the claimed consistency.

Claim 6 further requires that the coconut mean contains mainly water and is jelly like which is collected, bleached and mixed with preservatives. As green coconut meat is used as in the claim, the coconut meat is seen to contain as much water and to be jelly like. As the coconut meat only needs to be mixed with coconut water the flesh would have been jelly like. The green coconut is fresh in the recipe, however, if canned it would have been within the skill of the ordinary worker to bleach a material that would darken and to add preservatives for their known use. Therefore, it would have been obvious to use a coconut product as claimed.

Claim 7 further requires vanilla extract, which is a well-known ingredient used for flavoring foods and beverages. Attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in the fact situation of the instant case, and wherein the Court stated on page 234 as follows:

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper

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showing further establishes a coaction or cooperative relationship between the selected ingredients, which produces a new, unexpected, and useful function. In re Benjamin D. White, 17 C.C.P.A (Patents) 956, 39 F.2d 974, 5 USPQ 267; In re Mason et al., 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221. Therefore, it would have been obvious to use a known flavorant for its known use.

Claim 8 is to the method of making the beverage. Nothing new is seen in blending the ingredients together, which is the usual way of making a beverage, liquids, and solids are mixed together. Leaflet no. 8 discloses whipping the coconut meat and water together. Claim 8 differs from the reference in the use of a spray dried base from water, sugar and coconut cream powder and in the particular method of spray drying. However, spray dried coconut cream is known as disclosed by Tayag (abstract). The coconut cream powder further contains sugar. However, nothing new or unobvious is seen in the addition of sugar for its known function of adding sweetness. Beyerinck et al. disclose spray drying using atomized droplets sprayed into a heated chamber and a cyclone (col. 22, lines 45-70, 27, lines 40-70 and col. 28-60). Even though the composition of the reference is different, the process is known. Nothing is seen that the claimed process is not conventional as in the reference to Beyerinck. Beyerinck discloses that spray drying processes are known and are described in Perry's Chemical engineers' handbook (col. 22, lines 50-55). The reference to Tayag discloses that it is known to spray dry coconut cream. Therefore, it would have been obvious to make a beverage using the process of Beyerinck to make the spray-dried coconut cream of

Tayag in the composition of Leaflet No. 8. Also, it would have been obvious to mix ingredients in a blender to make a beverage.

#### ARGUMENTS

Applicant's arguments filed 2-24-06 have been fully considered but they are not persuasive. Applicants argue that the claims have been put into condition for allowance. However, the 112 rejection was not addressed in that office action.

In addition, the Examiner's suggestion was only a suggestion as to amending the claim. Certainly, such new limitations must be further searched. Spray drying in general is known as disclosed by the office action and nothing new is seen in applicant's method of spray drying.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 4-4-06

  
**HELEN PRATT**  
**PRIMARY EXAMINER**